

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GLENN EDWIN CLAY,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

Case No. 14-cv-02893-BAS-BLM

ORDER:

- (1) APPROVING AND
ADOPTING REPORT AND
RECOMMENDATION IN ITS
ENTIRETY (ECF No. 36);**
- (2) DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT (ECF No. 32);
AND**
- (3) GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT (ECF No. 33)**

Plaintiff Glenn Edwin Clay commenced this action under the Social Security Act, 42 U.S.C. § 405(g), challenging the Social Security Administration’s denial of his application for Supplemental Security Income (“SSI”) benefits.¹ The Court referred this matter to United States Magistrate Judge Barbara L. Major, who issued

¹ On January 23, 2017, Nancy A. Berryhill became the Acting Commissioner of Social Security. She is therefore substituted as Defendant in this suit for former Acting Commissioner Carolyn W. Colvin. *See* Fed. R. Civ. P. 25(d); 20 C.F.R. § 422.210(d) (stating that where an action for judicial review of a final decision by the Commissioner is instituted “the person holding the Office of the Commissioner shall, in his official capacity, be the proper defendant”).

1 a Report and Recommendation (“R&R”) on April 25, 2017, recommending that this
2 Court: (1) deny Plaintiff’s motion for summary judgment, and (2) grant Defendant’s
3 cross-motion for summary judgment. The time for filing objections to the R&R
4 expired on May 12, 2017. (R&R 31:5–7.) Both parties are represented by counsel,
5 but to date, neither party has filed any objections.

6 **I. ANALYSIS**

7 The court reviews *de novo* those portions of the R&R to which objections are
8 made. 28 U.S.C. § 636(b)(1). It may “accept, reject, or modify, in whole or in part,
9 the findings or recommendations made by the magistrate judge.” *Id.* But “[t]he statute
10 makes it clear that the district judge must review the magistrate judge’s findings and
11 recommendations *de novo if objection is made*, but not otherwise.” *United States v.*
12 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *see also Schmidt v.*
13 *Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (concluding that where no
14 objections were filed, the district court had no obligation to review the magistrate
15 judge’s report). “Neither the Constitution nor the statute requires a district judge to
16 review, *de novo*, findings and recommendations that the parties themselves accept as
17 correct.” *Reyna-Tapia*, 328 F.3d at 1121. This rule of law is well-established within
18 the Ninth Circuit and this district. *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13
19 (9th Cir. 2005) (“Of course, *de novo* review of a R & R is only required when an
20 objection is made to the R & R.”); *Nelson v. Giurbino*, 395 F. Supp. 2d 946, 949
21 (S.D. Cal. 2005) (Lorenz, J.) (adopting R&R in its entirety without review because
22 neither party filed objections to the R&R despite the opportunity to do so); *see also*
23 *Nichols v. Logan*, 355 F. Supp. 2d 1155, 1157 (S.D. Cal. 2004) (Benitez, J.).

24 In the social-security context, the district court’s jurisdiction is limited to
25 determining whether the Social Security Administration’s denial of benefits is
26 supported by substantial evidence in the administrative record. *See* 42 U.S.C. §
27 405(g). A district court may overturn a decision to deny benefits only if it is not
28 supported by substantial evidence or if the decision is based on legal error. *See*

1 Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995); Magallenes v. Bowen, 881
2 F.2d 747, 750 (9th Cir. 1989). The Ninth Circuit defines substantial evidence as
3 “more than a mere scintilla but less than a preponderance; it is such relevant evidence
4 as a reasonable mind might accept as adequate to support a conclusion.” Andrews,
5 53 F.3d at 1039. Determinations of credibility, resolution of conflicts in medical
6 testimony, and all other ambiguities are to be resolved by the administrative law
7 judge (“ALJ”). *See id.*; Magallenes, 881 F.2d at 750. The decision of the ALJ will be
8 upheld if the evidence is “susceptible to more than one rational interpretation.”
9 Andrews, 53 F.3d at 1040.

10 In this case, the deadline for filing objections was on May 12, 2017. However,
11 no objections have been filed, and neither party has requested additional time to do
12 so. Consequently, the Court may adopt the R&R on that basis alone. *See Reyna-*
13 *Tapia*, 328 F.3d at 1121. Nonetheless, having conducted a *de novo* review of the
14 R&R, the Court concludes that Judge Major’s reasoning is sound and correct in
15 recommending that this Court deny Plaintiff’s motion for summary judgment and
16 grant Defendant’s cross-motion for summary judgment. Therefore, the Court
17 approves and **ADOPTS IN ITS ENTIRETY** the R&R. *See* 28 U.S.C. § 636(b)(1).

18 **II. CONCLUSION & ORDER**

19 In light of the foregoing, the Court approves and **ADOPTS IN ITS**
20 **ENTIRETY** the R&R (ECF No. 36), **DENIES** Plaintiff’s motion for summary
21 judgment (ECF No. 32), and **GRANTS** Defendant’s cross-motion for summary
22 judgment (ECF No. 33). *See* 28 U.S.C. § 636(b)(1). Further, the Clerk of the Court
23 is directed to **SUBSTITUTE** Nancy A. Berryhill in place of Defendant Carolyn W.
24 Colvin. The Clerk of the Court shall then enter judgment accordingly and close this
25 case.

26 **IT IS SO ORDERED.**

27
28 **DATED: May 31, 2017**


Hon. Cynthia Bashant
United States District Judge